

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS
LIABILITY LITIGATION

MDL No. 2419
Dkt. No. 1:13-md-2419 (RWZ)

THIS DOCUMENT RELATES TO:

All Actions

**THE PLAINTIFFS' STEERING COMMITTEE'S CORRECTED¹
PROPOSED AGENDA FOR THE DECEMBER 17, 2015
DISCOVERY HEARING AND STATUS CONFERENCE**

The Plaintiffs' Steering Committee proposes the following agenda for the December 17, 2015 discovery hearing (before Judge Boal at 11:30 a.m.) and status conference (before both Judge Zobel and Judge Boal at 2:00 p.m.). The defendants, the Post Confirmation Officer, the FDA, the Massachusetts Board of Registration in Pharmacy, and the U.S. Attorney's office have been given an opportunity to comment on this proposed agenda.

**A. MOTIONS SET FOR ORAL ARGUMENT DURING THE DISCOVERY
HEARING²**

1. Tennessee Clinic Defendants' Motion for Protective Order to Preclude Depositions of Six (6) Howell Allen Physicians [Dkt. 2502]
 - a. PSC's Opposition (*forthcoming*)
 - b. PSC's Cross-Motion for Emergency Hearing on the Motion (*forthcoming*)
1. PSC's Motion for Protective Order Regarding Box Hill's Notice of Deposition by Written Questions [Dkt. 2353]
 - a. PSC's Motion to Seal [Dkt. 2352]

¹ The corrected version reflects the transfer of the Tennessee Clinic Defendants' Motion for Protective Order to Preclude Depositions of Six (6) Howell Allen Physicians [Dkt. 2502] from part E ("Briefing in Progress") to part A ("Motions Set for Oral Argument During the Discovery Hearing") and the addition of the PSC's forthcoming response in opposition and cross-motion for an emergency hearing on the motion, which will be filed before the discovery hearing and status conference.

² The Plaintiffs' Steering Committee's forthcoming Cross-Motion for Emergency Hearing (A(1)(b)) will formally request argument on the Tennessee Clinic Defendants' Motion for Protective Order to Preclude Depositions of Six (6) Howell Allen Physicians [Dkt. 2502]. The other motions in this section were set for hearing by electronic notices dated November 11, 2015 [Dkt. 2408] and December 8, 2015 [Dkt. 2473].

- i. Order granting Motion to Seal [Dkt. 2485]
 - b. Box Hill's Opposition [Dkt. 2425]
2. PSC's Motion for Protective Order Regarding Premier Defendants' Notices of Deposition by Written Questions [Dkts. 2372, 2374]
 - a. PSC's Motion to Seal Motion for Protective Order Regarding Premier Defendants' Notices of Deposition by Written Questions [Dkt. 2371]
 - i. Order granting Motion to Seal [Dkt. 2487]
 - b. Premier Defendants' Opposition [Dkt. 2385]
3. PSC's Motion to Compel Compliance with Subpoena to Michael O'Neal [Dkts. 2437, 2438, 2439]
 - a. O'Neal's Response [Dkt. 2478]
 - b. Tennessee Clinic Defendants' Opposition [Dkt. 2492]
 - c. PSC's Reply in Support of Motion to Compel [Dkt. 2505]
4. Michael O'Neal's Motion for Protective Order [Dkt. 2469]
 - a. Order permitting Katherine Young to appear by telephone [Dkt. 2484]
 - b. PSC's Opposition [Dkt. 2505]

B. MOTIONS FOR WHICH ORAL ARGUMENT IS REQUESTED DURING THE STATUS CONFERENCE

2. PSC's Motion for Partial Summary Judgment Regarding Product Liability Claims Against Saint Thomas Outpatient Neurosurgical Center [Dkts. 2300, 2302]³
 - a. Tennessee Clinic Defendants' Emergency Motion for Extension of Time to Respond to PSC Motion for Partial Summary Judgment Regarding Product Liability Claims Against Saint Thomas Outpatient Neurosurgical Center [Dkt. 2339]
 - i. PSC's Response [Dkt. 2350]
 - b. Saint Thomas Entities' Opposition [Dkt. 2465]
 - c. Tennessee Clinic Defendants' Response to PSC's Statement of Undisputed Materials Facts in Support of Motion for Partial Summary Judgment [Dkt. 2467]

³ During the November 12, 2015 status conference, the Court indicated that it would hear argument on this motion during the December 17, 2015 status conference.

- d. PSC's Reply in Support of its Motion [Dkt. 2508]
- 3. Saint Thomas Entities' Motion to Strike Dismissals of Bellwether Candidate Cases [Dkts. 2432, 2433]⁴
 - a. Tennessee Clinic Defendants' Joinder [Dkt. 2441]
 - b. PSC's Opposition [Dkt. 2470]

C. REPORT TO THE COURT

- 4. Status of bankruptcy
- 5. Status of insurance declaratory judgment actions
 - a. *State Farm Fire and Casualty Company v. Specialty Surgery Center PLLC, et al.*, 2:15-cv-00026 (M.D. Tenn.)
 - i. Competing proposed certification orders [Dkt. 2466-1]
- 6. Status of discovery
 - a. Court rulings update
 - i. Order setting schedule for case-specific discovery of remaining Bellwether candidates in Tennessee [Dkt. 2435]
 - ii. Electronic order denying Tennessee Clinic defendants' motion to modify or lift stay of FDA deposition [Dkt. 2436]
 - iii. Electronic order extending common fact discovery deadline for Premier cases [Dkt. 2456]
 - iv. Order denying without prejudice U.S. Attorney's Motion to Stay Deposition of Connolly and Notarianni and reiterating stay of depositions [Dkt. 2479]
 - v. Order again confirming stay of deposition for Connolly and Notarianni [Dkt. 2491]
 - 1. Tennessee Clinics' notice postponing depositions [Dkt. 2493]
- 7. Status of litigation track
 - a. Status of common benefit fee process by Thomas M. Sobol
 - b. Extension of stay for small clinic cases

⁴ During the November status conference, plaintiffs' counsel requested that this motion be heard at the December 17, 2015 status conference.

- i. Motion for Extension of Common Fact Discovery Deadline
Applicable to Cases Naming Box Hill Defendants to March 25,
2016 [Dkt. 2503]
 - c. PSC's Motion to Amend Complaints to Add Calisher & Associates as
Defendant in Cases Related to Claims Against Specialty Surgery Center
[Dkts. 2380, 2381]
 - d. PSC's Notice of Cases Dismissed That Named Only Settling Parties [Dkt.
2450]
- 8. Update on Michigan state court proceedings
 - 9. Report from *Pro Se* Liaison
 - 10. Schedule for future status conferences
 - a. January 14, 2:00 p.m. (Zobel)
 - b. January 15, 2:30 p.m. (Boal)
 - c. February 11, 11:30 a.m. (Boal)

D. FULLY BRIEFED MOTIONS

Discovery-Related Motions

- 11. Barry Cadden's Emergency Motion to Continue to Attend Depositions [Dkt. 2474]
 - a. Saint Thomas Entities' Response [Dkt. 2498]

Other Motions

- 12. Tennessee Clinic Defendants' Motion to Amend and Certify Order for Interlocutory
Appeal [Dkts. 2356, 2357]
 - a. PSC's Opposition [Dkt. 2393]
 - b. Premier Defendants' Joinder in Motion to Amend and Certify for
Interlocutory Appeal [Dkts. 2416, 2417]
 - i. PSC's Opposition [Dkt. 2445]
 - c. Box Hill Defendants' Joinder [Dkt. 2457]
- 13. Premier Defendants' Motion to Dismiss All Product Liability Claims [Dkt. 2387]
(*unopposed; entry of order granting motion requested*)
- 14. Choice of Law Briefing
 - a. Letters
 - i. Premier Defendants' letter [Dkt. 1915]

- ii. BKC Defendants' letter [Dkt. 1921]
 - iii. Box Hill Defendants' letter [Dkt. 1922]
- b. Three Pagers
 - i. PSC's Statement [Dkt. 1924]
 - ii. Trustee's Statement [Dkt. 1925]
 - iii. Saint Thomas Entities' Statement [Dkt. 1926]
 - iv. Tennessee Clinic Defendants' Statement [Dkt. 1942]
 - v. Premier Defendants' Statement [Dkt. 1927]
 - vi. GDC's Statement [Dkt. 1928]
 - vii. FDA's Statement [Dkt. 1948]
- c. Order re Choice of Law Issues [Dkt.1938]
- d. Briefs in Response to Order:
 - i. PSC's Response [Dkt. 2004]
 - ii. Ameridose's Joinder in PSC's Memorandum Regarding Choice of Law for cases filed in TN and NJ [Dkt. 2018]
 - iii. Saint Thomas Entities' Response [Dkt. 2071]
 - iv. Tennessee Clinic Defendants' Response [Dkt. 2073]
 - v. Specialty Surgery Clinic Defendants' Response [Dkt. 2064]
 - vi. Premier Defendants' Response [Dkt. 2072]
 - vii. Bhagat and Perkins' Response [Dkt. 2074]
 - viii. PSC's Reply [Dkt. 2097]

E. BRIEFING IN PROGRESS

Discovery-Related Motions

- 15. Tennessee Clinic Defendants' Emergency Motion for Clarification Regarding Defendants' Common Expert Disclosure Deadline [Dkt. 2510]
- 16. PSC's Motion to Compel Specialty Surgery Center and Dr. Lister to Provide Documents and Testimony [Dkt. 2494, 2495, 2496]
 - a. PSC's Motion to Seal [Dkt. 2497]

Motions for Access to Rust-Omni HIPAA Compliant Repository

- 17. Specialty Surgery's Motion for Access [Dkts. 2453, 2454]
- 18. Ohio and Illinois Medial Defendants' Motion for Access (includes BKC, APAC,

and Cincinnati Pain) [Dkt. 2477]

19. Box Hill's Motion for Access [Dkt. 2480]
20. Premier Defendants' Motion for Access [Dkt. 2501]
21. Motion and Joinder of Defendants Abdul R. Barakat, M.D. and Ocean State Pain Management, P.C. for Access [Dkt. 2504]
22. PSC's Omnibus Response (*forthcoming*)

Dispositive Motions

23. Ocean State Motion to Dismiss Product Liability Claims [Dkt. 2388]
24. Barakat Motion to Dismiss Product Liability Claims [Dkt. 2390]
25. Tennessee Clinic Defendants' Cross-Motion for Partial Summary Judgment on Product Liability Claims [Dkts. 2462, 2463, 2464, 2467]
 - a. Saint Thomas Entities' Joinder [Dkt. 2465]
 - b. PSC's Opposition [Dkt. 2508]
 - c. PSC's Response to Tennessee Clinic Defendants' Statement of Undisputed Facts [Dkt. 2509]

Other Motions

26. PSC Motion to Amend Case Management Deadlines Regarding Specialty Surgery Center Cases [Dkt. 2506]
27. Plaintiffs' Motion to Strike Certain Affirmative Defenses, Cross-Claims, and Third Party Claims in Box Hill's Answers [Dkts. 2451, 2452]
 - a. Joint Stipulation for Extension of Time for Box Hill to Oppose Plaintiffs' Motion to Strike Certain Affirmative Defenses from Defendants' Answer [Dkt. 2483]
28. Tennessee Clinic Defendants' Motion to Stay Decision on Cross-Motions for Partial Summary Judgment on Product Liability Claims [Dkt. 2466]
 - a. Saint Thomas Entities' Joinder in Motion to Stay Decision on Tennessee Clinic Defendants' and PSC's Motions for Partial Summary Judgment (*forthcoming*)

Dated: December 16, 2015

Respectfully submitted,

/s/ Kristen A. Johnson

Thomas M. Sobol, BBO # 471770

Kristen A. Johnson, BBO # 667261

HAGENS BERMAN SOBOL SHAPIRO

LLP

55 Cambridge Parkway, Suite 301

Cambridge, MA 02142

(617) 482-3700

tom@hbsslaw.com

kristenj@hbsslaw.com

*Plaintiffs' Lead Counsel on behalf of the
Plaintiffs' Steering Committee*

CERTIFICATE OF SERVICE

I, Kristen A. Johnson, hereby certify that I caused a copy of the above Proposed Agenda to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: December 16, 2015

/s/ Kristen A. Johnson

Kristen A. Johnson, BBO # 667261